



BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of California-American Water Company (U210W) for an Order Authorizing a Special Conservation Program and Modifications to its Rate Design in its Monterey District, and Authorization to Increase its Rates for Water Service in its Monterey District

A.07-12-010  
(Filed December 14, 2007)

## **PROTEST OF THE DIVISION OF RATEPAYER ADVOCATES**

Pursuant to Rule 2.6 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, the Division of Ratepayer Advocates ("DRA") files this protest to Application ("A.") 07-12-010 of California-American Water Company ("Cal Am") for an Order Authorizing a Special Conservation Program and Modification to its Rate Design in its Monterey District, and Authorization to Increase Rates for Water Service in its Monterey District. Cal Am's application raises several areas of concern that merit further investigation.

Cal Am filed its application on December 14, 2007 and it appeared in the Commission's daily calendar on December 18, 2007. DRA's protest is timely filed.

### **I. APPLICATION SUMMARY**

Cal Am's application for a special conservation program and rate design modifications seeks authority to make numerous changes to its conservation program. The major aspects of Cal Am's request are summarized below.

Cal Am requests authorization to make both interim and permanent changes to its emergency rate design and permanent changes to its conservation rate design. Cal Am seeks to add Seaside Water Basin production limitations and physical shortages to the criteria used for implementing emergency rates. Cal Am seeks to make the emergency

rates applicable during rationing and seeks to add Ryan Ranch, Bishop and Hidden Hill subsystems customers to both its conservation and emergency rate design. Cal Am also requests a Commission order to allow it to bill customers who receive free water service through contractual arrangements for water when the permanent and interim emergency rate design is in effect.

Cal Am proposes to change its current Rule 14.1 to incorporate many of these proposed changes and also seeks to add a provision to Rule 14.1 to allow Cal Am to impose and collect, through the water bill, excessive water use fees and to disconnect service for nonpayment of these fees. Cal Am also asks to modify Tariff Schedule 8.0 to authorize similar fees and authorize flow restrictor installation and charges.

As part of its proposed changes to its current conservation rate design, Cal Am asks for authority to replace its current Water Revenue Adjustment Mechanism (“WRAM”) with a full fixed cost WRAM. Cal Am also proposes to change its current low income program to consider family size and sets the discount at a fixed amount equal to 15 percent of an average customer’s bill for a similar household size.<sup>1</sup>

Cal Am also makes a number of requests regarding conservation and rationing spending. Cal Am asks the Commission to increase current conservation program budgets for Cal Am and Monterey Peninsula Water Management District (“MPWMD”) from \$630,000 to as much as \$2,406,359 in 2009 (averaging \$2,267,000 per year for years 2009-2011). Cal Am proposes to fund the conservation program through a surcharge and requests a one-way balancing account capped at a baseline level of \$2,267,000 per year for years 2009-2011. Cal Am also requests a surcharge to recover \$1,649, 000 for conservation spending for the period July to December 2008. This six month spending level amounts to about 73 percent of the annual spending budget for the next three years. This is in addition to the \$315,000 already in rates for the last six

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<sup>1</sup> Cal Am proposes to establish three family size group levels to implement this program.

months of 2008.<sup>2</sup> Cal Am requests a memorandum account for conservation expenditures over the balancing account cap.

With regards to rationing, Cal Am requests authority to implement a surcharge to recover \$2,930,000 a year if rationing is implemented. Spending would be tracked in a one-way balancing account capped at this amount. Cal Am requests a memorandum account for rationing expenditures over the balancing account cap.

## **II. PROCEDURAL ISSUES**

As discussed above, Cal Am requests changes to its rate design and increases to its conservation budget, among other things. Usually such requests are included in a utility's General Rate Case ("GRC") application. In fact, the Commission's revised rate case plan ("RCP") decision included minimum data requirements on these issues. (D. 06-12-016, pp. A-29, A-31.) Cal Am filed its proposed GRC application for the Monterey and Felton Districts on November 30, 2007 and is scheduled to file its final application on January 24, 2008. Cal Am's proposed application did not include these issues and instead refers those issues to this application.

DRA would normally oppose requests by a utility to break out portions of its GRC application for special treatment. The stated purpose of the Commission's Rate Case Plan decisions was to streamline Class A water utilities' rate cases and to set a schedule that provides sufficient time to process them. Breaking out a portion of a rate case for special or expedited treatment does not streamline regulation and defeats the purpose of those decisions. It also leads to ratepayer confusion when multiple changes to service rates have to be implemented.

In this limited circumstance, however, DRA does not object to Cal Am's request to handle limited issues outside of the RCP schedule and proceeding. Because of the unique situation in Monterey and the constraints that have been placed on its water

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<sup>2</sup> The Commission's rate case plan shows an effective date for new rates from Cal Am's 2008 rate case of July 1, 2009. The testimony does not specifically state whether the \$2,406,359 budgeted for 2009 includes the amounts that will be in rates for the first six months of 2009.

supply by both State Water Resource Control Board Order WR95-10 and the superior court decision in the Seaside Ground Water Basin adjudication, DRA does not oppose this separate Cal Am application.

DRA does, however, recommend other procedural changes to Cal Am's application. First, DRA recommends that the Commission require Cal Am to amend its application to include its request for a Modified Cost Balancing Account ("MCBA") in this application rather than in its 2008 GRC application (see Special Request #8 in the GRC application) so that DRA can analyze the requested Water Revenue Adjustment Mechanism ("WRAM") in conjunction with the MCBA.<sup>3</sup>

A WRAM in combination with an MCBA is a mechanism to decouple sales from revenue to reduce the utility's disincentive to conserve water. The WRAM/MCBA mechanism guarantees the utility will recover the portion of adopted fixed costs that are recovered through the quantity charge and actual variable cost, regardless of sales level. A WRAM without an MCBA or a WRAM analyzed and evaluated separately from an MCBA could allocate economic benefits of conserving water asymmetrically between ratepayers and shareholders. If sales revenue is lower than the forecast, a WRAM requires ratepayers to make the utility whole for the portion of adopted fixed costs that are recovered through the quantity charge. If sales decline, the utility has likely incurred lower variable costs because it provided fewer units of water. However, absent an MCBA, ratepayers will pay adopted average variable costs in addition to the portion of adopted fixed costs recovered through the quantity charge, and the portion of the adopted fixed costs recovered through the service charge. Thus, ratepayers would conserve water, but not receive any benefit from bill decreases due to lower average variable costs. DRA needs to analyze the potential impact of the MCBA and WRAM together to ensure that the decoupling mechanism does not unfairly reward or penalize ratepayers if sales are lower or higher than forecast.

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<sup>3</sup> DRA has made this request to Cal Am and believes that it is amenable to moving its MCBA request to this application.

DRA also recommends that the Administrative Law Judge (“ALJ”) require the Monterey Peninsula Water Management District to provide certain information and testimony in this proceeding if it wishes to fund a portion of its conservation program through a surcharge on Cal Am customers’ bill.<sup>4</sup> DRA makes two requests concerning MPWMD.

First, in many parts of Cal Am’s testimony, its witnesses state that MPWMD supports Cal Am’s requests.<sup>5</sup> DRA requests that MPWMD confirm through a formal filing that it agrees with those portions of Cal Am’s testimony that Cal Am states it has MPWMD’s agreement. Second, DRA recommends that MPWMD be required to provide testimony and a witness supporting its conservation program and budget. Cal Am is asking the Commission to approve an annual surcharge amounting to \$2.267 million for Cal Am’s and MPWMD’s conservation programs. Approximately one-third of this request is for MPWMD’s conservation program costs. Currently, only Cal Am has offered testimony supporting MPWMD’s budget.<sup>6</sup> DRA applauds the cooperation between Cal Am and MPWMD to achieve a coordinated conservation program. However, if Cal Am ratepayers are going to fund MPWMD conservation programs, MPWMD should provide testimony to support its programs and be prepared to testify to that testimony at hearings.

DRA also asks that the ALJ require Cal Am to provide DRA with a comprehensive conservation program report showing Cal Am and MPWMD conservation spending for 2007. In the settlement adopted by the Commission for the last Monterey GRC (D.06-11-050), Cal Am agreed to provide the Commission and DRA with such a report to assist the Commission with future conservation allocations and to

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<sup>4</sup> DRA understands that MPWMD plans to become a party in this proceeding.

<sup>5</sup> For example, at page 21 of the Direct Testimony of David Stephenson it states “all of these proposed changes [to the existing conservation rate design] have been reviewed by MPWMD management staff and they in unison have agreed that the proposed changes are necessary to promote increased water conservation.

<sup>6</sup> DRA is concerned that Cal Am’s witnesses will not be able to answer detailed questions concerning MPWMD’s conservation budget.

assure duplication of conservation efforts are avoided.<sup>7</sup> DRA requests that the report be provided no later than the end of February. While some of the information required by the report is contained in the testimony of Mr. Morse, some information is missing.<sup>8</sup> The report is necessary for DRA to evaluate the conservation efforts of Cal Am and MPWMD as a whole and for reviewing proposed conservation levels and programs.

Finally, DRA recommends that the issue of whether Cal Am should be permitted to bill customers for excessive water consumption be deferred to the Commission's Conservation Investigation ("I") 07-01-022, because this issue is scheduled to be considered by the Commission in Phase II of the proceeding.<sup>9</sup> Currently MPWMD is responsible for enforcing and collecting excess consumption fees. Under Cal Am's proposed change to Rule 14.1, Cal Am would bill these fees on customers' water bill and failure to pay these fees could result in late fees and service disconnection.<sup>10</sup> (Morse,

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<sup>7</sup> Specifically in paragraph 4.14(f) of the settlement Cal Am agrees as follows:

[t]o assist the Commission and ORA with future conservation allocations and to avoid any duplicative conservation efforts, CAW agrees it will file an annual summary report with the Commission and ORA showing which conservation activities CAW undertook (out of their normal operating budget) and which activities MPWMD undertook and the costs of each. MPWMD activities shall be broken out into those funded under MPWMD's current budget, those funded via Ordinance 92 memorandum account identified in Special Request # 6, and those funded via the surcharge proposed in this special request. This annual Monterey water conservation report shall include a brief explanation of the need for each activity, the nature of the activity, measurable goals, and the results and achievements of each program (i.e. number of units distributed or installed, estimated water – energy if quantifiable – savings in Ccfs and dollars, etc.) It shall also include a summary of the conservation plan for the following year with timelines, implementation plans, whether to be implemented by CAW or MPWMD and the budgeted amounts for each type of activity.

<sup>8</sup> Moreover, it is DRA's position that this report should be a stand-alone document.

<sup>9</sup> On page 7 of I.07-01-022, the Commission indicates that the following issues will be considered in that proceeding:

- How can excessive consumption be defined? Should it be established in a manner consistent with establishing baseline usage?
- Should customers with excessive water consumption be penalized in some way?
- What measures should utilities take to penalize those customers?

<sup>10</sup> DRA notes that Cal Am's proposal to bill water waste fees and disconnect service for nonpayment could have impacts on the Commission since complaints about fees and/or resulting disconnections would be made to the Commission.

Attachment B, p. 13.) The issue of defining excessive usage and deciding how, or even whether, a customer should be penalized for such usage are issues the Commission plans to address in the Conservation OII and should be deferred to that proceeding.

### **III. ISSUES**

On page 2 of its application, Cal Am identifies ten specific requests contained in its application. DRA notes that some of Cal Am's requests overlap. DRA will need to identify ways in which these requests overlap in order to properly analyze the application.

In addition, Cal Am's application contains insufficient or erroneous information for DRA to fully analyze its request. For example, Cal Am offers Exhibit B to Mr. Stephenson's testimony to show the effects of the permanent changes to the existing conservation rate design on selected usages within customer classifications. Cal Am has not provided tables showing the bill impacts for the proposed interim or emergency rate changes. In addition, the tables provided in Exhibit B appear to contain errors. For example the low income bill comparison shows no meter charges for low income customers while the testimony indicates there will be meter charges. DRA will need to conduct additional discovery to obtain the information needed to fully analyze Cal Am's request and to clarify inconsistency in the application.

DRA has identified a number of specific issues or areas it intends to review which are presented below. DRA is still in the process of reviewing Cal Am's application and further review may identify additional issues.

#### **Request 1: Changes to the current emergency rate design**

- Are the proposed production targets for the Carmel River and Seaside Basin reasonable?
- Are the proposed interim emergency rate tiers and charges for the subsystems appropriate?

- Has Cal Am provided sufficient justification and legal analysis to support a Commission order to require all water service<sup>11</sup> to be billed?
- Should a moratorium be considered?

**Request 2: Changes to current conservation rate design**

- Does Cal Am's proposed conservation rate design provide an adequate price signal to encourage conservation while avoiding rate shock and equitably distributing costs among customers?

**Request 3: Establish an emergency rationing rate design**

- Is it appropriate and necessary to implement an emergency rate design when there is also rationing? (See also rationing issues under Request 9 below.)

**Request 4: Changes to the low-income program**

- Do the changes Cal Am proposes to the low-income program expand the current program and are there additional measures that could be included to encourage low-income customers to participate and receive the benefits of the program?
- How do the proposed changes to the program impact low-income customers' bills and are these changes an improvement to the current program?
- How much will the proposed changes to the low-income program cost and what is the impact on subsidizing ratepayers?

**Request 5: Modify rate design for Ryan Ranch, Bishop, Hidden Hills, and Ambler**

- How does the proposed rate design for the Ryan Ranch, Bishop, Hidden Hills and Ambler Park subsystems compare to the rate design for main

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<sup>11</sup> Except that provided to the MPWMD.



system customers and are any differences between the two appropriate and reasonable?

- How do the proposed rate design changes for the subsystems differ on an interim basis and on a permanent basis and are such differences appropriate and reasonable?
- Is it equitable and appropriate to leave the current rate design in the Ralph Lane and Chular subsystems as it is?

#### **Request 6: Implement Full Fixed Cost Water Revenue Adjustment**

##### **Mechanism**

- Does Cal Am need a Full Fixed Cost WRAM and how does the mechanism differ from the existing Monterey WRAM as well as other WRAM/MCBA mechanisms under consideration by the Commission?
- Should Cal Am's return on equity be adjusted if the proposed mechanism is adopted?
- How does excluding purchased power from the MCBA affect ratepayers?
- Is Cal Am taking advantage of lower cost alternatives to replenishment water, such as recycled water, to ensure the MCBA does not lead to inefficiencies, depriving ratepayers of expected production costs savings?
- What is the potential impact on ratepayers of ensuring all fixed costs are recovered, not just fixed costs recovered in the quantity charge?
- Is there sufficient information to implement Cal Am's proposed decoupling mechanism as a permanent program rather than as a pilot program?

#### **Request 7: Modify current Rule 14.1**

- What are the implications of the proposed changes to Tariff Rule 14.1 and are they appropriate?
- Are the proposed changes to Tariff Rule 14.1 and Tariff Schedule 8.0 consistent internally and with Regulation XV (Ordinances 92 and 119)?

- Do the proposed changes to Rule 14.1 comply with the last GRC decision, D.06-11-050?
- Is it appropriate to remove the requirement that Cal Am achieve unaccounted for water usage levels at or below 7 percent from the Stage 2 conservation plan requirements in Rule 14.1?
- What are the implications of expanding the scope of Rule 14.1 to stages 4 through 7?
- What benefits will customers in Ryan Ranch, Hidden Hills and Bishop subsystems receive from having the water supplied from the entire Cal Am system,<sup>12</sup> and is it equitable to expand Rule 14.1 so it applies to those customers?
- If the Commission does not defer the issue to the Conservation Investigation (I.07-01-022), is it appropriate to allow Cal Am to collect water waste fees from customers for violation of MPWMD orders relating to implementing Regulation XV?
- Is it appropriate to authorize separate memorandum accounts for fee revenues, flow restrictor charges, and flow restrictor overtime charges?

#### **Request 8: Increase Conservation budget**

- Are the proposed conservation programs cost effective?
- What are the assumptions underlying Cal Am's cost effectiveness spreadsheets? Are these assumptions correct? If not, how does the proposed program change when accurate inputs are used?
- Do the conservation spending levels budgeted over or underestimate the amount required to implement programs capable of adequately achieving

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<sup>12</sup> On page 22 of Mr. Morse's testimony he state that residences in the subsystems will benefit from the water supplies of the entire Cal Am water system but does not identify those benefits. DRA is not aware of any plans to physically connect the systems and therefore needs to investigate what Mr. Morse's testimony is referring to.

conservation goals? Can conservation goals be achieved in a more cost effective way, and if so, how?

- Will there be sufficient conservation information available to non-English speaking customers?
- What type of performance metrics and reporting requirements should be adopted?

**Request 9: Establish a surcharge, balancing account, and memorandum account for conservation and rationing costs**

- Is Cal Am's proposal the most equitable and effective way to implement a surcharge so that all customers pay a fair share of the rationing or conservation budgets?
- Are the budget items Cal Am plans to spend the rationing surcharge on the most cost effective, rapid and efficient vehicles to reduce customer usage levels?
- Is a rationing budget of \$2.93 million reasonable or does it overestimate the amount required to implement rationing?
- What information should Cal Am include in its proposed annual report to the Commission and how would this report differ from the Annual Report Cal Am it is required to provide pursuant to D.06-11-050?
- Does Cal Am's request for a memorandum account to track spending over the budgeted levels meet the Commission requirements for memorandum account authorization?
- Would the Commission need to issue an order closing any existing memorandum accounts if it approves Cal Am's requests?

**Request 10: Authorize a mutually shared conservation program between Cal Am and MPWMD.**

- Are Cal Am's and MPWMD's conservation programs duplicative? (See also issue under Request 9.)

#### **IV. CATEGORIZATION AND NEED FOR HEARING**

DRA agrees with Cal Am's proposed categorization of this proceeding as rate setting and that there may be factual disputes on material issues that will require evidentiary hearings.

#### **V. SCHEDULE**

As discussed above, Cal Am filed this application for a special conservation program, proposed rate design modification, and other related relief separate from its 2008 general rate application to obtain expedited relief. Cal Am asks the Commission to issue a final decision on all aspects of this decision no later than June 30, 2008 and earlier if possible, stating that the Monterey Peninsula could suffer a drought in 2008. Cal Am states that the Monterey Peninsula is in the midst of a multi-year rainfall shortage that could impact water production and the Seaside Basin Adjudication decision placed Cal Am in a position in which it has to reduce water production or face severe over-drafting penalties.

While DRA understands Cal Am's concerns it notes that Cal Am's proposed schedule is not realistic and would not permit a diligent review of all issues by DRA. Cal Am's application includes issues that would normally be included in its 2008 general rate case. Under the GRC schedule, DRA would have had 204 days to review Cal Am's proposed conservation rate design and its conservation budget. This is in addition to the 60 days DRA has to review the proposed GRC application. Cal Am's proposed schedule gives DRA significantly less time.

DRA understands that the Monterey Peninsula may be facing some serious water supply issues in the coming year if the rain shortfalls occur.<sup>13</sup> DRA also understands that Cal Am has legal limitations on its water supply that need to be addressed. For that reason, DRA recommends that the Administrative Law Judge ("ALJ") bifurcate this

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<sup>13</sup> DRA notes that year-to-date rainfall levels in Monterey since July 1, 2007 are currently at normal levels.

proceeding into two phases. DRA recommends that Phase I cover those issues where more immediate action by the Commission may be necessary. DRA proposes a Phase I schedule that would result in a final decision by January 2009. To address the more immediate concern of possible shortages this summer, DRA agrees to meet with Cal Am to determine if some of Cal Am's interim emergency rate design changes and tariff Rule 14.1 changes can be settled earlier than the proposed schedule. If such a settlement is possible, a Commission decision on those limited issues could occur by mid-year.<sup>14</sup>

DRA recommends that the conservation rate design issues be deferred to Phase II. DRA understands that Cal Am plans to implement changes to its conservation rate design with the results from Cal Am's 2008 GRC application. The effective date for new rates for the 2008 GRC application is July 2009. DRA's proposed Phase II schedule proposes a final Phase II decision in March of 2009. A decision on rate design issues by March 2009 should allow Cal Am sufficient time to make any billing changes necessary to implement the new rates in July 2009.

DRA recommends that the issues in the proceeding be bi-furcated into two phases as follows:

#### **Phase I Issues**

- Changes to the current emergency rate design, including interim changes on emergency rates for Bishop, Ryan Ranch, and Hidden Hills.
- Modifications to tariff Rule 14.1
- Establishment of an emergency rationing rate design
- Increases to the conservation budget
- Authorization of a surcharge and memorandum/balancing accounts for conservation and rationing costs
- Authorization of a mutually shared conservation program between Cal Am and MPWMD

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<sup>14</sup> DRA has already met twice with Cal Am to discuss and clarify issues and seeks collaborative approaches to moving forward more expeditiously on some of Cal Am's requests.

**Phase II Issues:**

- Changes to the current conservation rate design
- Implementation of a full fixed cost WRAM and MCBA
- Changes to the low-income program
- Modifications to the permanent rate design for Ryan Ranch, Bishop, Hidden Hills, and Ambler Park

**DRA PROPOSED SCHEDULE**

<b>Application Filed</b>	<b>December 14, 2007</b>	
<b>Protest Filing</b>	<b>January 17, 2008</b>	
<b>Replies to Protest</b>	<b>January 28, 2008</b>	
<b>Pre-hearing Conference</b>	<b>February 2008</b>	
	<b>PHASE I</b>	<b>PHASE II</b>
<b>MPWMD Testimony</b>	<b>February</b>	
<b>Public Participation Hearings</b>	<b>April / afternoon &amp; evening</b>	<b>April / afternoon &amp; evening</b>
<b>DRA &amp; Intervenor Testimony</b>	<b>June 20, 2008</b>	<b>August 28, 2008</b>
<b>Cal Am Rebuttal Testimony</b>	<b>July 11, 2008</b>	<b>September 18, 2008</b>
<b>Settlement Discussions</b>	<b>Late July</b>	<b>Late September</b>
<b>Evidentiary Hearings</b>	<b>August 11-15, 2008</b>	<b>October 13-15, 2008</b>
<b>Opening Briefs</b>	<b>September 5, 2008</b>	<b>November 7, 2008</b>
<b>Reply Briefs</b>	<b>September 19, 2008</b>	<b>November 21, 2008</b>
<b>Proposed Decision</b>	<b>December 19, 2008</b>	<b>February 20, 2009</b>
<b>Final Decision</b>	<b>January 2009</b>	<b>March 20, 2009</b>

## **VI. CONCLUSION**

For the reasons stated above, DRA recommends that the Commission adopt the schedule proposed herein to permit DRA to conduct discovery to develop its testimony and recommendations. Hearings are likely and a schedule should be established at the pre-hearing conference that allows for a diligent review of Cal Am's application.

Respectfully submitted,

/s/ Monica McCrary

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January 17, 2008

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of [title of document] in [proceeding number] by using the following service:

[ X ] **E-Mail Service:** sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

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Executed on January 17, 2008 at San Francisco, California.

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/s/ Imelda C. Eusebio

Imelda C. Eusebio

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address and/or e-mail address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

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